

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

UNITED STATES OF AMERICA

:

v.

:

File No. 1:05-CR-12-01

:

DARRELL K. PHILLIPS

:

ORDER

The Magistrate Judge's Report and Recommendation was filed March 10, 2008 (Paper 111). After de novo review and absent objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1). Construing defendant's filing (Paper 99) as a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, the motion is DENIED.

Pursuant to Fed. R. App. P. 22(b), the Court DENIES petitioner a certificate of appealability ("COA") because the petitioner failed to make a substantial showing of a denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). The Court rejects the petition on its merits because the defendant has failed to demonstrate that reasonable jurists would find the Court's "assessment of the constitutional claims debatable or wrong." See Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 1603-04, 146 L.Ed.2d 542 (2000).

It is further certified that any appeal taken in forma pauperis from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 4<sup>th</sup> day of April, 2008.

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/s/ J. Garvan Murtha

J. Garvan Murtha

United States District Judge